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Line 2. Registrant. This must be the full legal name of the firm or individual registering for the FMC's Service Contract Filing System and any trade names. The registrant name should match the corporate charter or business license, conference membership, etc. It should be noted that the registrant name cannot be changed by the registrant after the registration without submission of an amended registration fee.

Line 3. Address of Home Office. The complete street address should be shown in addition to the post office box. Also, provide the registrant's Federal Taxpayer Identification Number ("TIN" Number).

Line 4. Billing Address if Different. This should be completed if the billing address differs from the home office address. Show the firm name (if different from the registrant), street address and post office box (if applicable).

Line 5. Organization Number. Complete if known. (Regulated Persons Index or "RPI" number.)

Line 6. Registrant Type. Indicate the type of organization. A registrant cannot be more than one type. This data cannot be changed by the registrant after registration without submission of an amended registration form.

Line 7. Permissions Requested and Person Granted These Permissions. Delegation of the authority to file should be noted here.

Maintenance of Organization Record.—The person listed in line 8 is authorized to access the organization maintenance functions (i.e., modify organization information, assign publishers, affiliations, and d/b/as).

Service Contract Filing.—The person listed in line 8 is authorized only to submit filings.

Line 8. Certified for Batch Filing. Indicate whether the registrant was registered with software certified to perform batch filings prior to May 1, 1999. Otherwise, the registrant must first be certified for batch filing as outlined in 46 CFR part 530. After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing log-on, the log-on (not the password) should be listed on the registration form. Also, the certification date received from the FMC should be listed on the registration form.

**PART 535—AGREEMENTS BY
OCEAN COMMON CARRIERS
AND OTHER PERSONS SUBJECT
TO THE SHIPPING ACT OF 1984**

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- APPENDIX E TO PART 535—MONITORING REPORT FOR CLASS C AGREEMENTS AND INSTRUCTIONS

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707; 1709–1710, 1712 and 1714–1718; Pub. L. 105–383, 112 Stat. 3411.

SOURCE: 49 FR 45351, Nov. 15, 1984, unless otherwise noted. Redesignated at 64 FR 11240, Mar. 8, 1999.

EDITORIAL NOTE: Nomenclature changes to part 535 appear at 64 FR 23794, May 4, 1999.

Subpart A—General Provisions

§ 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of

the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 19 of the Shipping Act of 1984 (“the Act”), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

[65 FR 26513, May 8, 2000]

§ 535.102 Purpose.

This part implements those provisions of the Act which govern agreements by or among ocean common carriers and agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers. This part also sets forth more specifically certain procedures provided for in the Act.

[49 FR 45351, Nov. 15, 1984. Redesignated and amended at 64 FR 11240, 11241, Mar. 8, 1999]

§ 535.103 Policies.

(a) The Act requires that agreements be processed and reviewed, upon their initial filing, according to strict statutory deadlines. This part is intended to establish procedures for the orderly and expeditious review of filed agreements in accordance with the statutory requirements.

(b) The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable provisions of the Act and empowers the Commission to obtain information to conduct that review. This part identifies those classes of agreements which must be accompanied by information submissions when they are first filed, and sets forth the kind of information for each class of agreement which the Commission believes relevant to that review. Only that information which is relevant to such a review is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(c) In order to further the goal of expedited processing and review of agreements upon their initial filing, agreements are required to meet certain minimum requirements as to form. These requirements are intended to ensure expedited review and should assist parties in preparing agreements. These

requirements as to form do not affect the substance of an agreement and are intended to allow parties the freedom to develop innovative commercial relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or this part. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing requirements of this part.

(e) Under the new regulatory framework established by the Act, the role of the Commission as a monitoring and surveillance agency has been enhanced. The Act favors greater freedom in allowing parties to form their commercial arrangements. This, however, requires greater monitoring of agreements after they have become effective, to assure continued compliance with all applicable provisions of the Act. The Act empowers the Commission to impose certain recordkeeping and reporting requirements. This part identifies those classes of agreements which require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission. Only that information which is necessary to assure that Commission monitoring responsibilities will be fulfilled is requested. It is the policy of the Commission to keep the costs of regulations to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(f) The Act requires that conference agreements must contain certain mandatory provisions. Each such agreement must: (1) state its purpose; (2) provide reasonable and equal terms and conditions for admission and readmission to membership; (3) allow for withdrawal from membership upon reasonable notice without penalty; (4) require an independent neutral body to police the conference, if requested by a member; (5) prohibit conduct specified in

sections 10(c)(1) or 10(c)(3) of the Act; (6) provide for a consultation process; (7) establish procedures for considering shippers' requests and complaints; and (8) provide for independent action. Parties to conference agreements are free to develop their own mandatory provisions in accordance with the requirements of section 5(b) of the Act.

(g) An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

(h) In order to promote competitive and efficient transportation and a greater reliance on the marketplace, the Act places limits on carriers' agreements regarding service contracts. Carriers may not enter into an agreement to prohibit or restrict members from engaging in contract negotiations, may not require members to disclose service contract negotiations or terms and conditions (other than those required to be published), and may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into contracts. However, agreement members may adopt voluntary guidelines covering the terms and procedures of members' contracts.

[49 FR 45351, Nov. 15, 1984, as amended at 61 FR 11573, Mar. 21, 1996; 64 FR 11241, Mar. 8, 1999]

§ 535.104 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) entered into by or among ocean common carriers and/or marine terminal operators, but does not include a maritime labor agreement.

(b) *Antitrust laws* means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), 15 U.S.C. 1, as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), 15 U.S.C. 12, as amended; the Federal Trade Commission Act (38 Stat. 717), 15 U.S.C. 41, as amended; sections 73 and

74 of the Act of August 27, 1894 (28 Stat. 570), 15 U.S.C. 8, 9, as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), 15 U.S.C. 13, as amended; the Antitrust Civil Process Act (76 Stat. 548), 15 U.S.C. 1311, note as amended; and amendments and Acts supplementary thereto.

(c) *Appendix* means a document containing additional material of limited application and appended to an agreement, distinctly differentiated from the main body of the basic agreement.

(d) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent that it provides for the collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized.

(e) *Capacity management or capacity regulation agreement* means an agreement between two or more ocean common carriers which authorizes withholding some part of the capacity of the parties' vessels from a specified transportation market, without reducing the real capacity of those vessels. The term does not include sailing agreements or space charter agreements.

(f) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the mar-

keting and distribution of those commodities; and

(ii) Only with respect to those commodities.

(g) *Conference agreement* means an agreement between or among two or more ocean common carriers which provides for the fixing of and adherence to uniform tariff rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members. The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

(h) *Consultation* means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

(i) *Cooperative working agreement* means an agreement which establishes exclusive, preferential, or cooperative working relationships which are subject to the Shipping Act of 1984, but which do not fall precisely within the arrangements of any specifically defined agreement.

(j) *Effective agreement* means an agreement effective under the Act.

(k) *Equal access agreement* means an agreement between ocean common carriers of different nationalities, as determined by the incorporation or domicile of the carriers' operating companies, whereby such common carriers associate for the purpose of gaining reciprocal access to cargo which is otherwise reserved by national decree, legislation, statute or regulation to carriage by the merchant marine of the carriers' respective nations.

(l) *Independent neutral body* means a disinterested third party, authorized by a conference and its members to review, examine and investigate alleged breaches or violations by any member of the conference agreement and/or the agreement's properly promulgated tariffs, rules or regulations.

(m) *Information form* means the form containing economic information which must accompany the filing of certain kinds of agreements and agreement modifications.

(n) *Interconference agreement* means an agreement between conferences.

(o) *Joint service agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur and there is no competition between members for traffic in the agreement trade; but they otherwise maintain their separate identities.

(p) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage space, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers or between two ocean common carriers. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to the consignee or outbound cargo may be received from shippers for vessel or container loading.

(q) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of Title 49 U.S.C. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

(r) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the Act or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

(s) *Modification* means any change, alteration, correction, addition, deletion, or revision of an existing effective agreement or to any appendix to such an agreement.

(t) *Monitoring report* means the report containing economic information which must be filed at defined intervals with regard to certain kinds of agreements that are effective under the Act.

(u) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

(v) *Ocean freight forwarder* means a person in the United States that (1) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers, and (2) processes the documentation or performs related activities incident to those shipments.

(w) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(x) *Pooling agreement* means an agreement between ocean common carriers which provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

(y) *Port* means the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

(z) *Rate*, for purposes of this part, includes both the basic price paid by a shipper to an ocean common carrier for a specified level of transportation service for a stated quantity of a particular commodity, from origin to destination, on or after a stated effective date or within a defined time frame, and also any accessorial charges or allowances that increase or decrease the total transportation cost to the shipper.

(aa) *Rate agreement* means an agreement between ocean common carriers which authorizes agreement upon, on either a binding basis under a common tariff or on a non-binding basis, or discussion of, any kind of rate.

(bb) *Sailing agreement* means an agreement between ocean common carriers which provides for the rationalization of service by establishing a schedule of ports which each carrier will serve, the frequency of each carrier's calls at those ports, and/or the size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity management or capacity regulation agreements.

(cc) *Service contract* means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers make a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level—such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of non-performance on the part of any party.

(dd) *Shipper* means:

- (1) A cargo owner;
- (2) The person for whose account the ocean transportation is provided;
- (3) The person to whom delivery is to be made;
- (4) A shippers' association; or

(5) A non-vessel-operating common carrier (i.e., a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier) that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(ee) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(ff) *Shippers' requests and complaints* means a communication from a shipper to a conference requesting a change in tariff rates, rules, regulations, or service; protesting or objecting to existing rates, rules, regulations or service; objecting to rate increases or other tariff changes; protesting allegedly erroneous service contract or tariff implementation or application, and/or requesting to enter into a service contract. Routine information requests are not included in the term.

(gg) *Space charter agreement* means an agreement between ocean common carriers whereby a carrier (or carriers) agrees to provide vessel capacity for the use of another carrier (or carriers) in exchange for compensation or services. The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo, but may not include capacity management or capacity regulation as used in this subpart.

(hh) *Through transportation* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is an ocean common carrier, between a United States point or port and a foreign point or port.

(ii) *Transshipment agreement* means an agreement between an ocean common carrier serving a port or point of origin and another such carrier serving a port or point of destination, whereby cargo is transferred from one carrier to another carrier at an intermediate port served by direct vessel call of both such carriers in the conduct of through transportation. Such an agreement

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does not provide for the concerted discussion, publication or otherwise fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the transshipment service offered, the port of transshipment and the participation of the nonpublishing carrier. An agreement which involves the movement of cargo in a domestic offshore trade as part of a through movement of cargo via transshipment involving the foreign commerce of the United States shall be considered to be in the foreign commerce of the United States and, therefore, subject to the Shipping Act of 1984 and the rules of this part.

(jj) *Vessel-operating costs* means any of the following expenses incurred by an ocean common carrier: Salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits; expenses associated with consumable stores, supplies and equipment; vessel fuel and incidental costs; vessel maintenance and repair expense; hull and machinery insurance costs; protection and indemnity insurance costs; costs for other marine risk insurance not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; and charter hire expenses.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984, as amended at 50 FR 6944, Feb. 19, 1985; 61 FR 11574, Mar. 21, 1996; 64 FR 11241, Mar. 8, 1999; 65 FR 26513, May 8, 2000]

Subpart B—Scope

§ 535.201 Subject agreements.

(a) *Ocean common carrier agreements*. This part applies to agreements by or among ocean common carriers to:

- (1) Discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;
- (2) Pool or apportion traffic, revenues, earnings, or losses;
- (3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;
- (4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;

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(5) Engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators;

(6) Control, regulate, or prevent competition in international ocean transportation; or

(7) Discuss and agree on any matter related to service contracts.

(b) *Marine terminal operator agreements*. This part applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean carriers to:

(1) Discuss, fix, or regulate rates or other conditions of service; or

(2) Engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984, as amended at 64 FR 11241, Mar. 8, 1999]

§ 535.202 Non-subject agreements.

This part does not apply to the following agreements:

(a) Any acquisition by any person, directly or indirectly, of any voting security or assets of any other person;

(b) Any maritime labor agreement;

(c) Any agreement related to transportation to be performed within or between foreign countries;

(d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States; and

(e) Any agreement among marine terminal operators which exclusively and solely involves transportation in the interstate commerce of the United States.

[49 FR 45351, Nov. 15, 1984. Redesignated and amended at 64 FR 11240, 11241, Mar. 8, 1999]

Subpart C—Exemptions

§ 535.301 Exemption procedures.

(a) *Authority*. The Commission, upon application or its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not result in substantial

reduction in competition or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing, or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Applications for exemptions shall conform to the general filing requirements for exemptions set forth at § 502.67 of this title.

(d) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Economics and Agreement Analysis for inspection during the term of the agreement and for a period of three years after its termination.

[49 FR 45351, Nov. 15, 1984, as amended at 59 FR 67230, Dec. 29, 1994; 61 FR 11574, Mar. 21, 1996; 64 FR 11241, Mar. 8, 1999]

§ 535.302 Non-substantive agreements and non-substantive modifications to existing agreements—exemption.

(a) A non-substantive agreement or a non-substantive modification to an existing agreement is an agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, which:

(1) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals.

(2) Reflects changes in the name of any geographic locality stated therein; the name of the agreement or the name of a party to the agreement; the names and/or numbers of any other section 4 agreement or designated provisions thereof referred to in an agreement; the table of contents of an agreement; the date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or

renumbers or reletters articles or sub-articles of agreements and references thereto in the text.

(3) Reflects changes in the titles or persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee.

(b) A copy of the non-substantive agreement or modification shall be submitted for information purposes in the proper format but is otherwise exempt from the notice and waiting period requirements of the Act, and of this part.

(c) Parties to agreements may seek a determination from the Director, Bureau of Economics and Agreement Analysis as to whether a particular modification is non-substantive.

(d) The filing fee for such agreements is described in § 535.401(f).

[49 FR 45351, Nov. 15, 1984, as amended at 50 FR 6944, Feb. 19, 1985; 59 FR 63908, Dec. 12, 1994; 59 FR 67230, Dec. 29, 1994; 61 FR 11574, Mar. 21, 1996]

§ 535.303 Husbanding agreements—exemption.

(a) A husbanding agreement is an agreement between a principal and an agent both of which are subject to the Act and which provides for the agent's handling of routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operator; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does *not* include an agreement which provides for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, nor does it include an agreement that prohibits the agent from entering into similar agreements with other carriers.

(b) A husbanding agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for such agreements is described in § 535.401(f).

[49 FR 45351, Nov. 15, 1984 as amended at 49 FR 48927, Dec. 17, 1984; 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

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§ 535.304 Agency agreements—exemption.

(a) An agency agreement is an agreement between a principal and an agent both of which are subject to the Act, which provides for the agent's solicitation and booking of cargoes and signing contracts of affreightment and bills of lading on behalf of an ocean common carrier. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents, including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) An agency agreement between persons subject to the Act is exempt from the filing requirements of the Act and of this part, except those: (1) Where a common carrier is to be the agent for a competing carrier in the same trade; or (2) which permit an agent to enter into similar agreements with more than one carrier in a trade.

(c) The filing fee for such agreements is described in § 535.401(f).

[49 FR 45351, Nov. 15, 1984 as amended at 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 535.305 Equipment interchange agreements—exemption.

(a) An equipment interchange agreement is an agreement between two or more ocean common carriers for (1) the exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment; and (2) the transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment.

(b) An equipment interchange agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for such agreements is described in § 535.401(f).

[49 FR 45351, Nov. 15, 1984 as amended at 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

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§ 535.306 Non-exclusive transshipment agreements—exemption.

(a) A nonexclusive transshipment agreement is an agreement by which one ocean common carrier serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not: (1) Prohibit either carrier from entering into similar agreements with other carriers; (2) guarantee any particular volume of traffic or available capacity; or (3) provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A non-exclusive transshipment agreement is exempt from the filing requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must

contain a declaration of the nonexclusive character of the arrangement and may provide for:

- (1) The identification of the parties and the specification of their respective roles in the arrangement;
 - (2) A specification of the governed cargo;
 - (3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;
 - (4) The specification of the origin, transshipment and destination ports;
 - (5) The specification of the governing tariff(s) and provision for their succession;
 - (6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;
 - (7) The division of revenues earned as a consequence of the described carriage;
 - (8) The division of expenses incurred as a consequence of the described carriage;
 - (9) Termination and/or duration of the agreement;
 - (10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;
 - (11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;
 - (12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and
 - (13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.
- (e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.
- (f) The filing fee for such agreements is described in § 535.401(f).

[49 FR 45351, Nov. 15, 1984 as amended at 49 FR 48927, Dec. 17, 1984; 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 535.307 Marine terminal agreements—exemption.

(a) *Marine terminal agreement* means an agreement, understanding, or association written or oral (including any modification, cancellation or appendix) that applies to future, prospective activities between or among the parties and which relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations which provides for the fixing of and adherence to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, and/or delivery of passengers or cargo for all members.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or ocean common carriers solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) All marine terminal agreements, as defined in § 535.307(a), with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements as defined in § 535.307 (b), (c) and (d) are exempt from the waiting period requirements of section 6 of the Shipping Act of 1984 and part 535 of this chapter

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on the condition that they be filed in the form and manner presently required by part 535 of this chapter.

(f) Agreements filed for and entitled to exemption under this paragraph will be exempted from the waiting period requirements effective on the date of their filing with the Commission.

(g) The filing fee for such agreements is described in § 535.401(f).

[52 FR 18697, May 19, 1987, as amended at 59 FR 63908, Dec. 12, 1994; 64 FR 11242, Mar. 8, 1999]

§ 535.308 Agreements between or among wholly-owned subsidiaries and/or their parent—exemption.

(a) An agreement between or among wholly-owned subsidiaries and/or their parent means an agreement under section 4 of the 1984 Act between or among an ocean common carrier or marine terminal operator subject to the 1984 Act and any one or more ocean common carriers or marine terminal operators which are ultimately owned 100 percent by that ocean common carrier or marine terminal operator, or an agreement between or among such wholly-owned carriers or terminal operators.

(b) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the filing requirements of the 1984 Act and of this part.

(c) Common carriers are exempt from section 10(c) of the 1984 Act to the extent that the concerted activities proscribed by that section result solely from agreements between or among wholly-owned subsidiaries and/or their parent.

(d) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the requirements of § 535.301(f) of this part.

(e) The filing fee for such agreements is described in § 535.401(f).

[53 FR 11073, Apr. 5, 1988, as amended at 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996]

§ 535.309 Miscellaneous modifications to agreements—exemptions.

(a) Each of the following types of modifications to agreements is exempt from the notice and waiting period requirements of the Act and of this part

provided that such modifications are filed for informational purposes in the proper format:

(1) Any modification which cancels an effective agreement.

(2) Any modification to the following:

(i) Parties to the agreement (limited to conference agreements, voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority), and discussion agreements among passenger vessel operating common carriers which are open to all ocean common carriers operating passenger vessels of a class defined in the agreements and which do not contain ratemaking, pooling, joint service, sailing or space chartering authority).

(ii) Officials of the agreement and delegations of authority.

(iii) Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

(b) Any modification exempt under paragraph (a) is effective upon filing.

(c) The filing fee for such agreements is described in § 535.401(f).

[50 FR 16703, Apr. 29, 1985. Redesignated at 52 FR 18697, May 19, 1987 and 53 FR 11073, Apr. 5, 1988; 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996; 64 FR 11242, Mar. 8, 1999]

§ 535.310 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services, including checking; dockage; free time; handling; heavy lift; loading and unloading; terminal storage; usage; wharfage; and wharf demurrage and including any marine terminal facilities which may be provided incidentally to such marine terminal services) that are provided to and paid for by an ocean common carrier. The term “marine terminal services agreement” does not include any agreement which conveys to the involved carrier any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or similar other

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arrangement for the use of marine terminal facilities or property.

(b) All marine terminal services agreements as defined in § 535.310(a) are exempt from the filing and waiting period requirements of sections 5 and 6 of the Shipping Act of 1984 and Part 535 of this chapter on condition that:

(1) They do not include rates, charges, rules and regulations which are determined through a marine terminal conference agreement, as defined in 46 CFR 535.307(b); and

(2) No antitrust immunity is conferred pursuant to section 7 of the Shipping Act of 1984, 46 U.S.C. app. 1706, with regard to terminal services provided to a common carrier by water under a marine terminal services agreement which is not filed with the Commission pursuant to the exemption provided by § 535.310(b).

(c) The filing fee for such agreements is described in § 535.401(f).

[57 FR 4583, Feb. 6, 1992, as amended at 59 FR 63908, Dec. 12, 1994; 64 FR 11242, Mar. 8, 1999]

§ 535.311 Marine terminal facilities agreement—exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, to the extent that the agreement involves ocean transportation in the foreign commerce of the United States, which conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 535.311(a) are exempt from the filing and waiting period requirements of sections 5 and 6 of the Shipping Act of 1984 and this part 535.

(c) Copies of any and all marine terminal facilities agreements currently in effect shall be provided, by parties to such agreements, to any requesting party for a reasonable copying and mailing fee.

(d) The filing fee for such agreements is described in § 535.401(f).

[58 FR 5631, Jan. 22, 1993, as amended at 59 FR 63908, Dec. 12, 1994]

Subpart D—Filing of Agreements

§ 535.401 General requirements.

(a) All agreements (including oral agreements reduced to writing in accordance with the Act) subject to this part and filed with the Commission for review and disposition pursuant to section 6 of the Act, shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such filing shall consist of:

(1) A true copy and 7 additional copies of the filed agreement;

(2) Where required by this part, an original and five copies of the completed Information Form Referenced at subpart E of this part; and

(3) A letter of transmittal as described in paragraph (b) of this section.

(b)(1) A filed agreement, to include such supporting documents as are submitted, shall be forwarded to the Commission via a letter of transmittal.

(2) The letter of transmittal shall: (i) Identify all of the documents being transmitted including, in the instance of a modification to an effective agreement, the full name of the effective agreement, the Commission-assigned agreement number of the effective agreement and the revision, page and/or appendix number of the modification being filed; (ii) provide a concise, succinct summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification; (iii) clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the forwarding party; and, (iv) be signed in the original by the forwarding party or on the forwarding party's behalf by an authorized employee or agent of the forwarding party.

(3) To facilitate the timely and accurate publication of the FEDERAL REGISTER Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such

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information is not provided elsewhere in the transmitted documents.

(c) Any agreement which does not meet the filing requirements of this section, including any applicable Information Form requirements, shall be rejected in accordance with § 535.601.

(d) Assessment agreements shall be filed and shall be effective upon filing.

(e) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the waiting period required under the Act.

(f) Agreement filings for Commission action requiring an Information Form and review by the Commission shall be accompanied by remittance of a \$1,666 filing fee; agreement filings for Commission action not requiring an Information Form, but requiring review by the Commission, shall be accompanied by remittance of a \$841 filing fee; agreement filings reviewed under delegated authority shall be accompanied by remittance of a \$391 filing fee; and agreement filings for terminal and carrier exempt agreements shall be accompanied by remittance of a \$131 filing fee.

[49 FR 45351, Nov. 15, 1984, as amended at 57 FR 40619, Sept. 4, 1992; 59 FR 63908, Dec. 12, 1994; 61 FR 11574, Mar. 21, 1996; 63 FR 50537, Sept. 22, 1998]

§ 535.402 Form of agreements.

The requirements of this section apply to all agreements except for cancellations, marine terminal agreements, and assessment agreements.

(a) Agreements shall be clearly and legibly written. Agreements in a language other than English shall be accompanied by an English translation.

(b) Every agreement shall include or be accompanied by a title page indicating:

(1) The name in which the agreement holds out service, or, in the absence of such a holding out, the full name of the agreement;

(2) Once assigned, the Commission-assigned agreement number;

(3) The generic classification of the agreement in conformity with the definitions in § 535.104;

(4) The date on which the entire agreement was last republished in accordance with § 535.403(g); and

(5) If applicable, the currently effective expiration date of the agreement and/or any specific provision thereof.

(c) Each agreement page (including modifications and appendices) shall be identified by printing the agreement name (as shown on the agreement Title Page) and, once assigned, the applicable Commission-assigned agreement number at the top of each page.

(d) Each agreement and/or modification filed will be signed in the original by an official or authorized representative of each of the parties and shall indicate the typewritten full name of the signing party and his or her position, including organizational affiliation. Faxed or photocopied signatures will be accepted if replaced with an original signature as soon as practicable before the effective date.

(e) Every agreement shall include or be accompanied by a Table of Contents providing for the location of all agreement provisions.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984; 61 FR 11575, Mar. 21, 1996, as amended at 64 FR 11242, Mar. 8, 1999]

§ 535.403 Agreement provisions.

If the following information (necessary for the expeditious processing of the agreement filing) does not appear fully in the text of the agreement, it shall be indicated in an attachment or appendix to the agreement, or on the title page:

(a) *Details regarding parties.* Indicate the full legal name of each party, including any FMC-assigned agreement number associated with that name; and the address of its principal office (to the exclusion of the address of any agent or representative not an employee of the participating carrier or association).

(b) *Geographic scope of the agreement.* State the ports or port ranges to which the agreement applies and any inland points or areas to which it also applies with respect to the exercise of the collective activities contemplated and authorized in the agreement.

(c) *Officials of the agreement and delegations of authority.* Specify, by organizational title, the administrative and

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executive officials determined by the parties to the agreement to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum, specify:

(1) The officials with authority to file agreements and agreement modifications and to submit associated supporting materials or with authority to delegate such authority; and

(2) A statement as to any designated U.S. representative of the agreement required by this chapter.

[64 FR 11242, Mar. 8, 1999]

§ 535.404 Organization of conference and interconference agreements.

(a) Each conference agreement shall include the following:

(1) *Neutral body policing.* State that, at the request of any member, the conference shall engage the services of an independent neutral body to fully police the obligations of the conference and its members. Include a description of any such neutral body authority and procedures related thereto.

(2) *Prohibited acts.* State affirmatively that the conference shall not engage in conduct prohibited by section 10(c)(1) or 10(c)(3) of the Act.

(3) *Consultation: Shippers' requests and complaints.* Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(4) *Independent action.* Include provisions for independent action in accordance with § 535.801 of this part.

(b)(1) Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier.

(2) Each interconference agreement must provide the right of independent action for each conference and specify the procedures therefor.

[64 FR 11242, Mar. 8, 1999]

§ 535.405 Modifications of agreements.

The requirements of this section apply to all agreements except for marine terminal agreements and assessment agreements.

(a) Agreement modifications shall be filed in accordance with the provisions

of § 535.401 and in the format specified in § 535.402.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published ("revised pages"). Revised pages shall indicate the consecutive denomination of the revision (e.g., "1st Revised Page 7"). Additional material may be published on a new original page. New pages inserted between existing pages shall be numbered with an appropriate suffix (e.g., a page inserted between page 7 and page 8 shall be numbered 7a, 7.1, or similarly).

(c) If the modification is made by the use of revised pages, the modification shall be accompanied by a page, submitted for illustrative purposes only, indicating the language being modified in the following manner (unless such marks are apparent on the face of the agreement):

(1) Language being deleted or superseded shall be struck through; and,

(2) New and initial or replacement language shall immediately follow the language being superseded and be underlined.

(d) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page which shall report the new location of the agreement's provisions.

(e) When deemed necessary to ensure the clarity of an agreement, the Commission may require parties to republish their entire agreement, incorporating such modifications as have been made. No Information Form requirements apply to the filing of a republished agreement.

[49 FR 45351, Nov. 15, 1984. Redesignated at 61 FR 11575, Mar. 21, 1996, as amended at 64 FR 11243, Mar. 8, 1999]

§ 535.406 Application for waiver.

(a) Upon showing of good cause, the Commission may waive the requirements of §§ 535.401, 535.402, 535.403, 535.404 and 535.405.

(b) Requests for such a waiver shall be submitted in advance of the filing of the agreement to which the requested waiver would apply and shall state:

(1) The specific provisions from which relief is sought;

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(2) The special circumstances requiring the requested relief; and

(3) Why granting the requested waiver will not substantially impair effective regulation of the agreement.

[61 FR 11575, Mar. 21, 1996]

§ 535.407 Complete and definite agreements.

(a) Any agreement required to be filed by the Act and this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

(b) Except as provided in paragraph (c) of this section, agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act.

(c) Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial implementation and are permitted without further filing under section 5 of the Act only if the further agreement concerns routine operational or administrative matters, including the establishment of tariff rates, rules, and regulations.

[49 FR 45351, Nov. 15, 1984. Redesignated at 61 FR 11575, Mar. 21, 1996]

Subpart E—Information Form Requirements

SOURCE: 61 FR 11575, Mar. 21, 1996, unless otherwise noted.

§ 535.501 General requirements.

(a) Certain agreement filings must be accompanied with an Information Form setting forth information and data on the filing parties' prior cargo carryings, revenue results and port service patterns.

(b) The filing parties to an agreement subject to this subpart shall complete and submit an original and five copies of the applicable Information Form at

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the time the agreement is filed. Copies of the applicable Form may be obtained at the Office of the Secretary or by writing to the Secretary of the Commission.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. Whenever the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(d) The Information Form for a particular agreement may be supplemented with any other information or documentary material.

(e) The Information Form and any additional information submitted in conjunction with the filing of a particular agreement shall not be disclosed except as provided in § 535.608.

[61 FR 11575, Mar. 21, 1996, as amended at 64 FR 11240, 11243, Mar. 8, 1999]

§ 535.502 Subject agreements.

Agreements subject to this subpart are divided into two classes, Class A/B and Class C. When used in this subpart:

(a) Class A/B agreement means an agreement that is one or more of the following:

(1) A rate agreement as defined in § 535.104(aa);

(2) A joint service agreement as defined in § 535.104(o);

(3) A pooling agreement as defined in § 535.104(x);

(4) An agreement authorizing discussion or exchange of data on vessel-operating costs as defined in § 535.104(jj); or

(5) An agreement authorizing regulation or discussion of service contracts as defined in § 535.104(cc).

(b) Class C agreement means an agreement that is one or more of the following:

(1) A sailing agreement as defined in § 535.104(bb); or

(2) A space charter agreement as defined in § 535.104(gg).

[61 FR 11575, Mar. 21, 1996, as amended at 64 FR 11240, 11243, Mar. 8, 1999]

§ 535.503 Information form for Class A/B agreements.

(a) The Information Form for Class A/B agreements, with accompanying instructions that are intended to facilitate the completion of the Form, is set forth in appendix A of this part. The instructions should be read in conjunction with the Shipping Act of 1984 and with this part 535.

(b) Modifications to Class A/B agreements that expand the geographic scope of the agreement or modifications to Class C agreements that change the class of the agreement from C to A/B must be accompanied by an Information Form for Class A/B agreements.

[61 FR 11575, Mar. 21, 1996, as amended at 64 FR 11240, 11243, Mar. 8, 1999]

§ 535.504 Information form for Class C agreements.

The Information Form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Form, is set forth in appendix B of this part. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 535.

§ 535.505 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any part of the information form requirements of § 535.503 or § 535.504.

(b) A request for such a waiver must be approved in advance of the filing of the information form to which the requested waiver would apply. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver. Requests for a waiver shall state:

- (1) The specific requirements from which relief is sought;
- (2) The special circumstances requiring the requested relief; and
- (3) Why granting the requested waiver will not substantially impair effective regulation of the agreement, either during pre-implementation review or during post-implementation monitoring.

Subpart F—Action on Agreements**§ 535.601 Preliminary review—rejection of agreements.**

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the filing requirements of the Act and this part and, where applicable, whether the accompanying Information Form is complete or, where not complete, whether the deficiency is adequately explained or is excused by a waiver granted by the Commission under § 535.505.

(b)(1) The Commission shall reject any agreement that otherwise fails to comply with the filing and Information Form requirements of the Act and this part. The Commission shall notify in writing the person filing the agreement of the reason for rejection of the agreement. The entire filing, including the agreement, the Information Form and any other information or documents submitted, shall be returned to the filing party.

(2) Should the agreement be refiled, the full waiting period must be observed.

[49 FR 45351, Nov. 15, 1984, as amended at 61 FR 11576, Mar. 21, 1996]

§ 535.602 Federal Register notice.

(a) With the exception of marine terminal facilities agreements, as defined in § 535.311(a), a notice of any filed agreement which is not rejected pursuant to § 535.601 will be transmitted to the FEDERAL REGISTER within seven days of the date of filing.

(b) The notice will include:

- (1) A short title for the agreement;
- (2) The identity of the parties to the agreement and the filing party;
- (3) The Federal Maritime Commission agreement number;
- (4) A concise summary of the agreement's contents;
- (5) A statement that the agreement is available for inspection at the Commission's offices; and
- (6) The final date for filing comments regarding the agreement.

[49 FR 45351, Nov. 15, 1984, as amended at 58 FR 5631, Jan. 22, 1993]

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§ 535.603 Comment.

(a) Persons may file with the Secretary written comments regarding a filed agreement. Such comments will be submitted in an original and ten (10) copies and are not subject to any limitations except the time limits provided in the FEDERAL REGISTER notice. Late-filed comments will be received only by leave of the Commission and only upon a showing of good cause. If requested, comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. Such requests must include a statement of legal basis for confidential treatment including the citation of appropriate statutory authority. Where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosure.

(b) The filing of a comment does not entitle a person to: (1) reply to the comment by the Commission; (2) the institution of any Commission or court proceeding; (3) discussion of the comment in any Commission or court proceeding concerning the filed agreement; or (4) participation in any proceeding which may be instituted.

[49 FR 45351, Nov. 15, 1984, as amended at 57 FR 40619, Sept. 4, 1992]

§ 535.604 Waiting period.

(a) The waiting period before an agreement becomes effective shall commence on the date that an agreement is filed with the Commission.

(b) Unless suspended by a request for additional information or extended by court order, the waiting period terminates and an agreement becomes effective on the latter of the 45th day after the filing of the agreement with the Commission or on the 30th day after publication of notice of the filing in the FEDERAL REGISTER.

(c) The waiting period is suspended on the date when the Commission, either orally or in writing, requests additional information or documentary materials pursuant to section 6(d) of the Act. The waiting period resumes on the date of receipt of the additional material or of a statement of the reasons for

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noncompliance, and the agreement becomes effective in 45 days unless the waiting period is further extended by court order.

§ 535.605 Requests for expedited approval.

(a) Upon written request of the filing party, the Commission may shorten the review period. Accompanying the request, the filing party should provide a full explanation, with reference to specific facts and circumstances, of the necessity for a shortened waiting period. If the Commission decides to approve an abbreviated waiting period, the term will be decided after consideration of the parties' needs and the Commission's ability to perform its review functions under a reduced time schedule. In no event, however, may the period be shortened to less than fourteen days after the publication of the notice of the filing of the agreement in the FEDERAL REGISTER. When a request for expedited approval is denied by the Commission, the normal waiting period specified in § 535.604 will apply. Such expedition will not be granted routinely and will be granted only in exceptional circumstances which include but are not limited to: the impending expiration of the agreement; operational urgency; Federal or State imposed time limitations; or other reasons which, in the Commission's discretion, constitute grounds for granting the request.

(b) A request for expedited approval will be considered for an agreement whose waiting period has resumed after having been suspended by a request for additional information.

[49 FR 45351, Nov. 15, 1984, as amended at 50 FR 16704, Apr. 29, 1985]

§ 535.606 Requests for additional information.

(a) The Commission may request from the filing party any additional information and documentary material necessary to complete the statutory review required by section 6 of the Act. The request shall be made prior to the expiration of the waiting period. All additional information and documentary material shall be submitted to the Director, Bureau of Economics and Agreement Analysis, Federal Maritime

Commission, Washington, DC 20573. If the request is not fully complied with, a statement of reasons for noncompliance shall be provided for each item or portion of such request which is not fully answered.

(b) Where the Commission has made a request for additional information material, the agreement's effective date is 45 days after receipt of the additional material. In the event all material is not submitted, the agreement's effective date will be 45 days after receipt of both the documents and information which are submitted, if any, and the statement indicating the reasons for noncompliance. The Commission may, upon notice to the Attorney General, and pursuant to sections 6(i) and 6(k) of the Act, request the United States District Court for the District of Columbia to further extend the agreement's effective date until there has been substantial compliance.

(c) A request for additional information may be made orally or in writing. In the case of an oral request, a written confirmation of the request shall be mailed to the filing party within seven days of the communication.

(d) The party upon whom a request for additional information is made will have a reasonable time to respond, as specified by the Commission. The test of reasonableness shall be based on the particular circumstances of the request and shall be determined on a case-by-case basis.

(e) Notice that a request for additional information has been made will be published by the Commission and served on commenting parties. Such notice will indicate only that a request has been made and will not specify what information is being sought. Within fifteen (15) days following service of the notice, further comments on the agreement may be filed.

[49 FR 45351, Nov. 15, 1984, as amended at 59 FR 67230, Dec. 29, 1994]

§ 535.607 Failure to comply with requests for additional information.

(a) A failure to comply with a request for additional information results when a person filing an agreement, or an officer, director, partner, agent, or employee thereof fails to substantially respond to the request or does not file a

satisfactory statement of reasons for noncompliance. An adequate response is one which directly addresses the Commission's request. When a response is not received by the Commission within a specified time, failure to comply will have occurred.

(b) The Commission may, pursuant to section 6(i) of the Act, request relief from the United States District Court for the District of Columbia when it considers that there has been a failure to substantially comply with a request for additional information. The Commission may request that the court:

(1) Order compliance with the request; and

(2) At its discretion, grant other equitable relief which under the circumstances seems necessary or appropriate.

(c) Where there has been a failure to substantially comply, section 6(i)(2) of the Act provides that the court shall extend the review period until there has been substantial compliance.

§ 535.608 Confidentiality of submitted material.

(a) Except for an agreement filed under section 5 of the Act, all information submitted to the Commission by the filing party will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, and replies to requests for additional information.

(b) Information which is confidential pursuant to paragraph (a) of this section may be disclosed, however, to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(c) Parties may voluntarily disclose or make information publicly available. If parties elect to disclose information they shall promptly inform the Commission.

[49 FR 45351, Nov. 15, 1984, as amended at 61 FR 11576, Mar. 21, 1996]

§ 535.609 Negotiations.

At any time after the filing of an agreement and prior to the conclusion of judicial injunctive proceedings, the filing party or an authorized representative may submit additional factual or legal support for an agreement or may propose modifications of an agreement. Such negotiations between Commission personnel and filing parties may continue during the pendency of injunctive proceedings. Shippers, other government departments or agencies, and other third parties may not participate in negotiations.

Subpart G—Reporting and Record Retention Requirements**§ 535.701 General requirements.**

(a) Certain agreements are required to submit quarterly Monitoring Reports on an ongoing basis for as long as they remain in effect, setting forth information and data on the agreement member lines' cargo carryings, revenue results and port service patterns under the agreement.

(b) Certain agreements are required to submit minutes of their meetings for as long as they remain in effect.

(c) *Joint Services.* For purposes of the requirements of this Subpart, a joint service filing its own Monitoring Report shall file as one carrier. If a joint service is a party to another agreement that is otherwise subject to the requirements of this Subpart, the joint service shall be treated as one member of that agreement for purposes of that agreement's Monitoring Reports.

(d) *Address.* Monitoring Reports and minutes required by this subpart should be addressed to the Commission as follows: Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, Washington, DC 20573-0001. Copies of the applicable Monitoring Report form may be obtained from the Bureau of Economics and Agreement Analysis. The lower, left-hand corner of the envelope in which each Monitoring Report or set of minutes is forwarded should indicate the nature of its contents and the related agreement number. For example: "Monitoring Report, Agreement 5000" or "Minutes, Agreement 5000."

(e) *Electronic filing.* Reports and minutes required to be filed by this subpart may be filed by electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Economics and Agreement Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by submission by an official of the filing party of a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2:00 p.m. Eastern time on Commission business days.

(f) *Time for filing.* Monitoring Reports shall be filed within 75 days of the end of each calendar quarter. Other documents shall be filed within 30 days of the end of a quarter-year, a meeting, or the receipt of a request for documents.

(g) A complete response in accordance with the instructions on the applicable Monitoring Report shall be supplied to each item. Whenever the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for non-compliance and the efforts made to obtain the required information.

(h) A Monitoring Report for a particular agreement may be supplemented with any other information or documentary material.

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(i) *Confidentiality*. (1) The Monitoring Reports, minutes, and any other additional information submitted for a particular agreement will be exempt from disclosure under 5 U.S.C. 552, except to the extent:

(i) It is relevant to an administrative or judicial action or proceeding; or

(ii) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(2) Parties may voluntarily disclose or make Monitoring Reports, minutes or any other additional information publicly available. The Commission must be promptly informed of any such voluntary disclosure.

[49 FR 45431, Nov. 15, 1984, as amended at 59 FR 67231, Dec. 29, 1994; 61 FR 11576, Mar. 21, 1996; 61 FR 40530, Aug. 5, 1996]

§ 535.702 Agreements subject to Monitoring Report requirements.

(a) Agreements subject to the Monitoring Report requirements of this subpart are divided into three classes, Class A, Class B and Class C. When used in this subpart:

(1) *Class A agreement* means an agreement that is subject to the definition set forth in § 535.502(a) and has market shares of 50 percent or more in half or more of its sub-trades.

(2) *Class B agreement* means an agreement that is subject to the definition set forth in § 535.502(a) but does not have market shares of 50 percent or more in half or more of its sub-trades.

(b) Classification of an agreement as “Class A” or “Class B” for purposes of its reporting obligations under this subpart shall be done by the Bureau of Economics and Agreement Analysis, based in the first instance on the market share data reported on the agreement’s Information Form pursuant to § 535.503, or on similar data otherwise obtained. Thereafter, before the beginning of each calendar year, the Bureau of Economics and Agreement Analysis shall determine whether the agreement should be classified as “Class A” or “Class B” for that year, based on the market share data reported on the agreement’s quarterly Monitoring Report for the previous second quarter (April–June).

(c) *Class C agreement* means an agreement that is subject to the definition set forth in § 535.502(b).

[61 FR 11576, Mar. 21, 1996, as amended at 61 FR 40531, Aug. 5, 1996]

§ 535.703 Monitoring report for Class A agreements.

The Monitoring Report form for Class A agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix C of this part. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 535.

[61 FR 11577, Mar. 21, 1996]

§ 535.704 Monitoring report for Class B agreements.

The Monitoring Report form for Class B agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix D of this part. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 535.

[61 FR 11577, Mar. 21, 1996]

§ 535.705 Monitoring report for Class C agreements.

The Monitoring Report form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix E of this part. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 535.

[61 FR 11577, Mar. 21, 1996]

§ 535.706 Filing of minutes—including shippers’ requests and complaints, and consultations.

(a) *Meetings*. For purposes of this subpart, the term *meeting* shall include any meeting of the parties to the agreement, including meetings of their agents, principals, owners, committees, or subcommittees of the parties authorized to take final action on behalf of the parties. Where the agreement so authorizes, this includes final action by telephonic or personal polls of the membership.

(b) *Content of minutes.* Except as provided in paragraph (c) of this section, conferences, interconference agreements, agreements between a conference and one or more ocean common carriers, pooling agreements, equal access agreements, discussion agreements, maritime terminal conferences, and marine terminal rate fixing agreements shall, through a designated official, file with the Commission a report of each meeting defined in paragraph (a) of this section describing all matters within the scope of the agreement which are discussed or considered at any such meeting, including shippers' requests and complaints, as well as consultations with shippers and shippers' associations, and shall indicate the action taken. These reports need not disclose the identity of parties that participated in discussions or the votes taken.

(c) *Exemption.* No minutes need be filed under paragraph (b) of this section with respect to any discussion of or action taken with regard to:

(1) Rates that, if adopted, would be required to be published in the pertinent tariff except that this exemption does not apply to discussions limited to general rate policy, general rate changes, the opening or closing of rates, or service or time/volume contracts; or

(2) Purely administrative matters.

(d) *Serial numbers.* (1) Each set of minutes filed with the Commission should be assigned a number. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign Meeting No. 1 to its minutes, the next meeting will be assigned Meeting No. 2, and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its minutes in a manner which differs from that set forth in paragraph (d)(1) of this section may continue to utilize its own system thereof.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984. Redesignated and amended at 57 FR 40619, Sept. 4, 1992. Redesignated and amended at 61 FR 11576, Mar. 21, 1996; 64 FR 11243, Mar. 8, 1999]

§ 535.707 Other documents.

Each agreement required to file minutes pursuant to § 535.706 shall list in said minutes all reports, circulars, notices, statistics, analytical studies or other documents, not otherwise filed with the Commission pursuant to this subpart, which are distributed to the member lines and are used to reach a final decision on any of the following matters:

(a) Revenue projections and plans. (This would exclude individual rate adjustments but would include general rate adjustments, surcharges and other items affecting shipper costs.)

(b) Studies regarding proposed changes to the conference agreement or its membership.

(c) Non-conference competition.

(d) Changes in the nature and type of transportation service generally and specifically at individual ports or points.

(e) Trade tonnage requirements, vessel utilization and vessel replacement plans.

(f) Conference participation in trade (market share).

(g) The exercise of the right of independent action.

(h) Development of transportation technology and intermodal services.

(i) Malpractices.

(j) Use of service contracts, time volume rate schemes and loyalty contracts.

(k) Conference relationship with shippers and shipper groups.

(l) Governmental and other foreign requirements affecting the conference.

[57 FR 40619, Sept. 4, 1992. Redesignated and amended at 61 FR 11576, Mar. 21, 1996]

§ 535.708 Retention of records.

Each agreement required to file minutes pursuant to this subpart shall retain a copy of each document listed in said minutes for a minimum period of 3 years after the date the document is distributed to the members. Such documents may be requested by the Director, Bureau of Economics and Agreement Analysis, in writing by reference to a specific minute, and shall indicate that the documents will be received in confidence. Requested documents shall

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be furnished by the parties within the time specified.

[61 FR 11577, Mar. 21, 1996]

§ 535.709 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.

(b) A request for such a waiver must be approved in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver. Requests for a waiver shall state:

(1) The specific requirements from which relief is sought;

(2) the special circumstances requiring the requested relief; and

(3) why granting the requested waiver will not substantially impair effective regulation of the agreement.

[61 FR 11576, Mar. 21, 1996]

Subpart H—Mandatory and Prohibited Provisions

§ 535.801 Independent action.

(a) Each conference agreement shall specify the independent action (“IA”) procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item upon not more than 5 calendar days’ notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b)(1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 5 calendar days’ notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the tariff publication requirements of this chapter.

(2) A conference agreement shall not prescribe notice periods for adopting, withdrawing, postponing, canceling, or taking other similar actions on independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the publication of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action (except for exempt commodities not published in the conference tariff) shall be included by the conference in its tariff for use by that member effective no later than 5 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f)(1) As it pertains to this part, “adopt” means the assumption in identical form of an originating member’s independent action rate or service item, or a particular portion of such rate or service item. If a carrier adopts an IA at a lower rate than the conference rate when there is less than 30 days remaining on the original IA, the adopted IA should be made to expire 30 days after its effectiveness to comply with the statutory 30-day notice requirement. In the case of an independent action time/volume rate (“IA TVR”), the dates of the adopting IA may vary from the dates of the original IA, so long as the duration of the adopting IA is the same as that of the originating IA. Furthermore, no term other than “adopt” (e.g., “follow,” “match”) can be used to describe the action of assuming as one’s own an initiating carrier’s IA. Additionally, if a party to an agreement chooses to take on an IA of another party, but alters it, such action is considered a new IA and

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must be published pursuant to the IA publication and notice provisions of the applicable agreement.

(2) An IA TVR published by a member of a ratemaking agreement may be adopted by another member of the agreement, provided that the adopting member takes on the original IA TVR in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period) (i.e., a separate TVR with a separate volume of cargo but for the same duration). Any subsequent IA TVR offering which results in a change in any aspect of the original IA TVR, other than the name of the offering carrier or the beginning date of the adopting IA TVR, is a new independent action and shall be processed in accordance with the provisions of the applicable agreement. The adoption procedures discussed above do not authorize the participation by an adopting carrier in the cargo volume of the originating carrier's IA TVR. Member lines may publish and participate in joint IA TVRs, if permitted to do so under the terms of their agreement; however, no carrier may participate in an IA TVR already published by another carrier.

(g) A conference agreement shall not require or permit individual member lines to be assessed on a per carrier usage basis the costs and/or administrative expenses incurred by the agreement in processing independent action filings.

(h) A conference agreement may not permit the conference to unilaterally designate an expiration date for an independent action taken by a member line. The right to determine the duration of an IA remains with the member line, and a member line must be given the opportunity to designate whatever duration it chooses for its IA, regardless if the duration is for a special period or open ended. Only in instances where a member line gives its consent to the conference, or where a member line freely elects not to provide for the duration of its IA after having been given the opportunity, can the conference designate an expiration date for the member line's IA.

(i) Any new conference agreement or any modification to an existing conference agreement which does not com-

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ply with the requirements of this section shall be rejected pursuant to § 535.601.

(j) If ratemaking is by sections within a conference, then any notice to the conference required by § 535.801 may be made to the particular ratemaking section.

[57 FR 54531, Nov. 19, 1992, as amended at 64 FR 11243, Mar. 8, 1999]

§ 535.802 Service contracts.

(a) Ocean common carrier agreements may not prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with one or more shippers.

(b) Ocean common carrier agreements may not require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required by section 8(c)(3) of the Shipping Act.

(c) Ocean common carrier agreements may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate or enter into service contracts.

(d) An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's or agreement members' service contracts if the guidelines explicitly state the right of the members of the agreement not to follow these guidelines.

(e) Voluntary guidelines shall be submitted to the Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, Washington, DC 20573. Voluntary guidelines shall be kept confidential in accordance with § 535.608 of this part. Use of voluntary guidelines prior to their submission is prohibited.

[64 FR 11244, Mar. 8, 1999]

§ 535.803 Ocean freight forwarder compensation.

No conference or group of two or more ocean common carriers may:

(a) Deny to any member of such conference or group the right, upon notice of not more than 5 calendar days, to

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take independent action on any level of compensation paid to an ocean freight forwarder; or

(b) Agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under the tariff assessed against the cargo on which the forwarding services are provided.

[64 FR 11244, Mar. 8, 1999]

Subpart I—Penalties

§ 535.901 Failure to file.

Any person operating under an agreement involving activities subject to the Act pursuant to sections 4 and 5(a) of the Act and this part and not exempted pursuant to section 16 of the Act or excluded from filing by the Act, which has not been filed and has not become effective pursuant to the Act and this part is in violation of the Act and of this part and is subject to the civil penalties set forth in section 13(a) of the Act.

§ 535.902 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable Information Form or Monitoring Report, is a violation of the rules of this part and is subject to the civil penalties set forth in section 13(a) of the Act and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

[61 FR 11577, Mar. 21, 1996]

Subpart J—Paperwork Reduction

§ 535.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control number assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13. The Commission intends that this section comply with the requirements of section 3507(a)(3) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Direc-

tor of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
535.101 through 535.902	3072-0045

[49 FR 45431, Nov. 15, 1984, as amended at 61 FR 11577, Mar. 21, 1996]

APPENDIX A TO PART 535—INFORMATION FORM FOR CLASS A/B AGREEMENTS AND INSTRUCTIONS

Instructions

All agreements between ocean common carriers that are Class A/B agreements as defined in 46 CFR 535.502(a) must be accompanied by a completed Information Form for such agreements. A complete response must be supplied to each part of the Form. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of the requirements of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement as also provided under 46 CFR 535.403.

PART II

Part II requires a list of all effective agreements (1) that cover all or part of the geographic scope of the filed agreement, (2) whose parties include one or more of the parties to the filed agreement, and (3) that fall within at least one of the following categories: an agreement that authorizes "capacity management" or "capacity regulation" as defined by 46 CFR 535.104(e); a "joint service agreement" as defined by 46 CFR 535.104(o); a "pooling agreement" as defined by 46 CFR 535.104(x); a "rate agreement" as defined by 46 CFR 535.104(aa); a "sailing agreement" as defined by 46 CFR 535.104(bb); an agreement that authorizes regulation or discussion of "service contracts" as defined by 46 CFR 535.104(cc); a "space charter agreement" as defined by 46 CFR 535.104(gg); or an agreement that authorizes discussion or exchange of data on "vessel-operating costs" as defined by 46 CFR 535.104(jj).

Part III(A)

Part III(A) requires a statement as to whether the agreement authorizes the parties to collectively fix rates under a common tariff, to agree upon rates on a non-binding basis, or to discuss rates. Such rate activities may be authorized by a conference agreement, an interconference agreement, an agreement among one or more conferences and one or more non-conference ocean common carriers, an agreement between two or more conference member lines, an agreement between one or more conference member lines and one or more non-conference ocean common carriers, or an agreement among two or more non-conference ocean common carriers.

Part III(B)

Part III(B) requires a statement as to whether the agreement authorizes the parties to establish a joint service.

Part III(C)

Part III(C) requires a statement as to whether the agreement authorizes the parties to pool cargo or revenues.

Part III(D)

Part III(D) requires a statement as to whether the agreement authorizes the parties to discuss or exchange data on vessel-operating costs as defined in 46 CFR 535.104(jj).

Part III(E)

Part III(E) requires a statement as to whether the agreement authorizes the parties to regulate or discuss service contracts.

Part IV

Part IV requires the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement, during the most recent calendar quarter for which complete data are available. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. *Sub-trade* is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic— Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf— Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

Pacific— Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island and Wake Island.

An application may be filed for a waiver of the definition of “sub-trade,” under the procedure described in 46 CFR 535.505. In any such application, the burden shall be on the filing carriers to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The carriers must further show that, though operating individually, they were nevertheless applying essentially similar regional practices.

The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows:

The total amount of liner cargo carried on each liner operator’s liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The calendar quarter used must be clearly identified. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the agreement lines was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Liner movements is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Information Form.

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Part V

Part V requires, for each agreement member line that served all or any part of the geographic area covered by the agreement during all or any part of the most recent 12-month period for which complete data are available, a statement of each line's total liner cargo carryings within the geographic area, total liner revenues within the geographic area, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the 12-month period was containerized, each agreement member line should report only its total carryings of containerized liner cargo (measured in TEUs) within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the 12-month period was non-containerized, each line should report only its total carryings of non-containerized liner cargo (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement.

The Information Form specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part VI

Part VI requires a list, for each sub-trade within the scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff filing) carried by all the agreement member lines during the same 12-month period used in responding to Part V, or a list of the commodities accounting for 50 percent of the total liner cargo carried by all the agreement member lines during the 12-month period, whichever list is longer. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the 12-month period was containerized, this list should include only containerized commodities. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the 12-month period was non-containerized, this list should include only non-containerized commodities. Commodities should be identified at the 4-digit level of customarily used commodity coding schedules. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

Part VII

Part VII requires a statement of the cargo volume and revenue results experienced by each of the parties to the proposed agreement from each major commodity in each subtrade. The Information Form specifies the format in which the information is to be reported.

Part VIII

Part VIII is concerned with the levels of service at each port within the entire geographic scope of the agreement. Each of the agreement lines is required to provide the number of calls it made at each port over the 12-month period used in responding to Parts V, VI and VII, and also to indicate any immediate change it plans to make in the nature or type of service at a particular port after the agreement goes into effect.

Part IX(A)

Part IX(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IX(B)

Part IX(B) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding a request for additional information or documents.

Part IX(C)

Part IX(C) requires that a representative of the agreement lines sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

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INFORMATION FORM FOR CERTAIN AGREEMENTS BY OR AMONG OCEAN COMMON CARRIERS

Agreement Number _____
(Assigned by FMC)

PART I AGREEMENT NAME:

Part II Other Agreements

Lists all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part III Agreement Type

(A) Rate Agreements

Does the agreement authorize the parties to collectively fix rates on a binding basis

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under a common tariff, or to agree upon rates on a non-binding basis, or to discuss rates?

Yes ☐ No ☐

(B) Joint Service Agreements

Does the agreement authorize the parties to establish a joint service?

Yes ☐ No ☐

(C) Pooling Agreements

Does the agreement authorize the parties to pool cargoes or revenues?

Yes ☐ No ☐

(D) Vessel-Operating Costs

Does the agreement authorize the parties to discuss or exchange data on vessel-operating costs?

Yes ☐ No ☐

(E) Service Contracts

Does the agreement authorize the parties to discuss or agree on service contract terms and conditions, on either a binding or non-binding basis?

Yes ☐ No ☐

Part IV Market Share Information

Provide the market shares of all liner operators within the entire scope of the agreement and within each agreement sub-trade during the most recent calendar quarter for which complete data are available. The information should be provided in the format below:

MARKET SHARE REPORT FOR (INDICATE EITHER ENTIRE AGREEMENT SCOPE, OR SUB-TRADE NAME) TIME PERIOD

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
Line A	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Total Agreement Market Share ..	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Total Non-Agreement Market Share	X,XXX	XX
Total Market	X,XXX	100

Part V Cargo and Revenue Results Agreement-Wide

For each party that served all or any part of the geographic area covered by the entire agreement during all or any part of the most recent 12-month period for which complete data are available, state total cargo carrying in TEUs or other unit of measurement with-

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in the entire geographic area, total revenues within the geographic area, and average revenue per TEU or other unit of measurement. The same 12-month period must be used for each party. The information should be provided in the format below:

TIME PERIOD			
Carrier	Total TEUs or other unit of measurement	Total revenues	Avg. revenue per TEU or other unit of measurement
A	\$	\$
B	\$	\$
C	\$	\$
Etc	\$	\$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities carried by all the parties during the same time period used in responding to Part V, or list the commodities accounting for 50 percent of the total carried by all the parties during the same 12-month period, whichever list is longer. The same 12-month period must be used in reporting for each sub-trade. The information should be provided in the format below:

Time Period (Same as That Used in Responding to Part V)

I. Sub-Trade

- First leading commodity
- Second leading commodity
- Third leading commodity etc.

II. Sub-Trade

- First leading commodity etc.

Part VII Cargo and Revenue Results by Sub-Trade

For the same time period used in responding to Parts V and VI, and for each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state the total TEUs (or other unit of measurement) carried and average gross revenue per TEU (or other unit of measurement).

The information should be provided in the format below:

TIME PERIOD (SAME AS THAT USED IN RESPONDING TO PART V)

I. Sub-trade A

- First leading commodity
 - Carrier A
 - Total TEUs (or other unit of measurement) carried

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- (b) Average gross revenue per TEU (or other unit of measurement) _____ 1. etc.
2. Carrier B _____
- (a) etc. _____
- B. Second leading commodity _____
1. Carrier A _____
- (a) etc. _____
- II. Sub-trade B _____
- A. First leading commodity _____

Part VIII Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the same time period used in responding to Parts V, VI and VII. The information should be provided in the format below:

TIME PERIOD

[Same as that used in responding to Part V]

	Port	Port	Port	Port	Port
Carrier A.					
Carrier B.					
Carrier C.					
Etc..					

Also, for each party, indicate any planned change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) to be effected at any port within the entire geographic scope of the agreement after the effective date of the agreement.

Part IX

(A) Identification of Person(s) to Contact Regarding the Information Form

- (1) Name _____
- (2) Title _____
- (3) Firm Name and Business _____
- (4) Business Telephone Number _____
- (5) Cable Address, Telex or Fax Number _____

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 535.606).

- (1) Name _____
- (2) Title _____
- (3) Firm Name and Business _____
- (4) Business Telephone Number _____
- (5) Cable Address, Telex or Fax Number _____

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____

Title _____

Relationship with parties to agreement _____

Signature _____

Date _____

[61 FR 11577, Mar. 21, 1996, as amended at 61 FR 64823, Dec. 9, 1996; 64 FR 23794, May 4, 1999]

APPENDIX B TO PART 535—INFORMATION FORM FOR CLASS C AGREEMENTS AND INSTRUCTIONS.

Instructions

All agreements between or among ocean common carriers that are Class C agreements as defined in 46 CFR 535.502(b) must be accompanied by a completed Information Form for such agreements. A complete response must be supplied to the Form. Where the filing party is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of the requirements of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement as also provided under 46 CFR 535.403.

PART II

Part II requires a list of all effective agreements that (1) cover all or part of the geographic scope of the filed agreement, (2) whose parties include one or more of the parties to the filed agreement, and (3) that fall

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within at least one of the following categories: an agreement that authorizes “capacity management” or “capacity regulation” as defined by 46 CFR 535.104(e); a “joint service agreement” as defined by 46 CFR 535.104(o); a “pooling agreement” as defined by 46 CFR 535.104(x); a “rate agreement” as defined by 46 CFR 535.104(aa); a “sailing agreement” as defined by 46 CFR 535.104(bb); an agreement that authorizes regulation or discussion of “service contracts” as defined by 46 CFR 535.104(cc); a “space charter agreement” as defined by 46 CFR 535.104(gg); or an agreement that authorizes discussion or exchange of data on “vessel-operating costs” as defined by 46 CFR 535.104(jj).

Part III

Part III is concerned with the level of service at each port within the entire geographic scope of the agreement. Each agreement line is required to state the number of calls it made at each port over the most recent 12-month period for which complete data are available, and also to indicate any immediate change it plans to make in the nature or type of service at a particular port after the agreement goes into effect.

Part IV(A)

Part IV(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IV(B)

Part IV(B) requires the name, title, address, telephone number and cable address,

telex or fax number of a person the Commission may contact regarding a request for additional information or documents.

Part IV(C)

Part IV(C) requires that a representative of the agreement lines sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

INFORMATION FORM FOR CERTAIN AGREEMENTS BY OR AMONG OCEAN COMMON CARRIERS

Agreement Number _____

(Assigned by FMC)

Part I Agreement Name: _____

Part II Other Agreements

List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part III Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the most recent 12-month period for which complete data are available. The information should be provided in the format below.

TIME PERIOD

	Port	Port	Port	Port	Port
Carrier A					
Carrier B					
Carrier C					
Etc.					

Also, for each party, indicate any planned change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) to be effected at any port within the entire geographic scope of the agreement after the effective date of the agreement.

Part IV

(A) Identification of Person(s) to Contact Regarding the Information Form.

(1) Name _____

(2) Title _____

(3) Firm Name and Business _____

(4) Business Telephone Number _____

(5) Cable Address, Telex or Fax Number _____

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 535.606).

(1) Name _____

(2) Title _____

(3) Firm Name and Business _____

(4) Business Telephone Number _____

(5) Cable Address, Telex or Fax Number _____

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(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____

Title _____

Relationship with parties to agreement _____

Signature _____

Date _____

[61 FR 11579, Mar. 21, 1996, as amended at 61 FR 64823, Dec. 9, 1996; 64 FR 23794, May 4, 1999]

APPENDIX C TO PART 535—MONITORING REPORT FOR CLASS A AGREEMENTS AND INSTRUCTIONS

Instructions

A complete response must be supplied to each part of the Report. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires the filing party to indicate whether the agreement authorizes the parties to operate as a conference.

Part IV

Part IV requires the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the calendar quarter. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line.

Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both

U.S. inbound and outbound line movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island and Wake Island.

An application may be filed for a waiver of the definition of "sub-trade," under the provisions described in 46 CFR 535.709. In any such application, the burden shall be on the agreement carriers to show that their marketing and pricing practices are done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The Commission will also consider whether the alternate definition of "sub-trade" requested by the waiver application is reasonably consistent with the definition of "sub-trade" applied in the original Information Form filing for the agreement.

The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows:

The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the calendar quarter, divided by the total liner movements in the entire agreement scope or in the sub-trade during the calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the agreement lines was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Liner movements is the carriage of liner cargo by liner operators. *Liner cargoes* are

cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

Part V

Part V requires each agreement member line's total liner cargo carryings within the entire geographic area covered by the agreement during the calendar quarter, each line's total liner revenues within the geographic area during the calendar quarter, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was containerized, each agreement member line should report only its total carryings of containerized liner cargo (measured in TEUs) during the calendar quarter within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was non-containerized, each agreement member line should report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of noncontainerized liner cargo, and average revenue per unit of measurement.

The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part VI

Part VI requires a list, for each sub-trade within the scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff filing) carried by all the agreement member lines during the calendar quarter, or a list of the commodities accounting for 50 percent of the total liner cargo carried by all the agreement member lines during the calendar quarter, whichever list is longer. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the calendar quarter was containerized, this list should include only containerized commodities. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the calendar quarter was noncontainerized, this list

should include only non-containerized commodities. Commodities should be identified at the 4-digit level of customarily used commodity coding schedules. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

Part VII

Part VII requires a statement of the cargo volume and revenue results experience by each of the agreement lines from each major commodity in each sub-trade during the calendar quarter. The Monitoring Report specifies the format in which the information is to be reported.

Part VIII

Part VIII is required to be completed if Part III is answered "YES." Each conference line is required to indicate the extent to which it has taken independent rate actions on each of the leading commodities in each of the sub-trades. Part VIII also inquires into the type of shipper for whom independent rate actions have been taken. The Monitoring Report specifies the format in which the information is to be reported.

Part IX

Part IX requires each of the agreement lines to indicate any change in the nature or type of service it provided at any port within the entire geographic range of the agreement during the calendar quarter.

Part X(A)

Part X(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part X(B)

Part X(B) requires that a representative of the agreement lines sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

MONITORING REPORT FOR CLASS A AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

Agreement Number _____
(Assigned by FMC)

Part I Agreement Name: _____

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Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Conference Agreements

Does the agreement authorize the parties to operate as a conference?

Yes ☐ No ☐

Part IV Market Share Information

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each agreement sub-trade during the calendar quarter. The information should be provided in the format below:

MARKET SHARE REPORT FOR CALENDAR QUARTER

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
Line A	X,XXX	XX%
Line B	X,XXX	XX%
Line C	X,XXX	XX%
Total Agreement Market Share	X,XXX	XX%
Non-Agreement Market Share:		
Line X	X,XXX	XX%
Line Y	X,XXX	XX%
Line Z	X,XXX	XX%
Total Non-Agreement Market Share	X,XXX	XX%
Total Market	X,XXX	100%

Part V Cargo and Revenue Results Agreement-Wide

For each agreement member line, provide total cargo carryings (measured in TEUs or other unit of measurement) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU or other unit of measurement. The information should be provided in the format below:

CALENDAR QUARTER			
Carrier	Total TEUs or other unit of measurement	Total revenues	Acg. Revenue per TEU or other unit of measurement
A	\$	\$
B	\$	\$

CALENDAR QUARTER—Continued

Carrier	Total TEUs or other unit of measurement	Total revenues	Acg. Revenue per TEU or other unit of measurement
C	\$	\$
Etc	\$	\$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities carried by all the parties during the calendar quarter, or list the commodities accounting for 50 percent of the total carried by all the parties during the calendar quarter, whichever list is longer. The information should be provided in the format below:

CALENDAR QUARTER

I. Sub-trade

- A. First leading commodity
- B. Second leading commodity
- C. Third leading commodity etc.

II. Sub-trade

- A. First leading commodity etc.

Part VIII Cargo and Revenue Results by Sub-Trade

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state the total TEUs (or other unit of measurement) carried and average gross revenue per TEU (or other unit of measurement).

The information should be provided in the format below:

CALENDAR QUARTER

I. Sub-trade A

- A. First leading commodity
 - 1. Carrier A
 - (a) Total TEUs (or other units of measurement) carried
 - (b) Average gross revenue per TEU (or other unit of measurement)
 - 2. Carrier B
 - (a) etc.

II. Sub-trade B

- A. First leading commodity
 - 1. etc.

Part VIII Independent Rate Actions (if applicable)

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state

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(a) the total number of independent rate actions taken during the calendar quarter applicable to that commodity moving in that sub-trade; (b) how many of the total were independent rate actions taken to service specific shipper accounts; (c) of those, how many were for non-vessel-operating common carriers, and how many were for shippers' associations. The information should be provided in the format below:

CALENDAR QUARTER

I. Sub-trade A

A. First leading commodity

1. Carrier A

(a) Number of IA rate actions

(i) Number of IA rate actions taken to service specific shipper accounts

(i)(a) Number taken to service non-vessel-operating common carrier accounts

(i)(b) Number taken to service shippers' association accounts

2. Carrier B

(a) etc.

B. Second leading commodity

1. Carrier A

(a) etc.

II. Sub-trade B

A. First leading commodity

1. etc.

Part IX Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part X

(A) Identification of Person(s) to Contact Regarding the Monitoring Report.

(1) Name _____

(2) Title _____

(3) Firm Name and Business _____

(4) Business Telephone Number _____

(5) Cable Address, Telex or Fax Number _____

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____

Title _____

Relationship with parties to agreement _____

Signature _____

Date _____

[61 FR 11580, Mar. 21, 1996]

APPENDIX D TO PART 535—MONITORING REPORT FOR CLASS B AGREEMENTS AND INSTRUCTIONS.

Instructions

A complete response must be supplied to each part of the Report. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the calendar quarter. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line.

Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic— Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf— Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and U.S. Virgin Islands.

Pacific— Includes all ports in the State of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island and Wake Island.

Federal Maritime Commission

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An application may be filed for a waiver of the definition of "sub-trade," under the provisions described in 46 CFR 535.709. In any such application, the burden shall be on the agreement carriers to show that their marketing and pricing practices are done by ascertainable multi-country regions rather than by individuals countries or, in the case of the United States, by broader areas than the port ranges defined herein. The Commission will also consider whether the alternate definition of "sub-trade" requested by the waiver application is reasonably consistent with the definition of "sub-trade" applied in the original Information Form filing for the agreement.

The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows:

The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the calendar quarter, divided by the total liner movement in the entire agreement scope or in the sub-trade during the calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as by agreement lines must be provided, stated separately in the format indicated.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the agreement lines was non-containerized cargo, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Liner movements is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

Part IV

Part IV requires each agreement member line's total liner cargo carrying within the entire geographic area covered by the agreement during the calendar quarter, each line's total liner revenues within the geographic area during the calendar quarter, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the

agreement during the calendar quarter was containerized, each agreement member line should report only its total carrying of containerized liner cargo (measured in TEUs) during the calendar quarter within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was non-containerized, each agreement member line should report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized cargo, and average revenue per unit of measurement.

The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part V

Part V requires each of the agreement member lines to indicate any change in the nature or type of service it provided at any port within the entire geographic scope of the agreement during the calendar quarter.

Part VI(A)

Part VI(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part VI(B)

Part VI(B) requires that a representative of the agreement lines sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

MONITORING REPORT FOR CLASS B AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

Agreement Number _____
(Assigned by FMC)

Part I Agreement

Name: _____

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Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Market Share Information

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each sub-trade during the calendar quarter. The information should be provided in the format below:

**MARKET SHARE REPORT FOR CALENDAR
QUARTER**

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of meas- urement	Percent
Agreement Market Share:		
Line A	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Total Agreement Market Share	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Total Non-Agreement Market Share	X,XXX	XX
Total Market	X,XXX	100

*Part IV Cargo and Revenue Results
Agreement-Wide*

For each agreement member line, provide total cargo carryings (measured in TEUs or other unit of measurement) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU or other unit of measurement. The information should be provided in the format below:

CALENDAR QUARTER

Carrier	Total TEUs or other unit of meas- urement	Total revenues	Avg. revenue per TEU or other unit of meas- urement
A	\$	\$
B	\$	\$
C	\$	\$
Etc	\$	\$

Part V Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of in-

direct rather direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part VI

**(A) IDENTIFICATION OF PERSON(S) TO CONTACT
REGARDING THE MONITORING REPORT**

- (1) Name _____
 (2) Title _____
 (3) Firm Name and Business _____
 (4) Business Telephone Number _____
 (5) Cable Address, Telex or Fax Number _____

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____

Title _____
 Relationship with parties to agreement _____

Signature _____
 Date _____

[61 FR 11582, Mar. 21, 1996]

**APPENDIX E TO PART 535—MONITORING
REPORT FOR CLASS C AGREEMENTS
AND INSTRUCTIONS**

Instructions

A complete response must be supplied to the Report. Where the filing party is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires a statement of any change in the nature or type of service at any of the ports within the entire geographic scope of the agreement.

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Part IV(A)

Part IV(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part IV(B)

Part IV(B) requires that a representative of the agreement lines sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

MONITORING REPORT FOR CLASS C AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

Agreement Number _____
(Assigned by FMC)

Part I Agreement

Name: _____

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part IV

(A) IDENTIFICATION OF PERSON(S) TO CONTACT REGARDING THE MONITORING REPORT

- (1) Name _____
- (2) Title _____
- (3) Firm Name and Business _____
- (4) Business Telephone Number _____
- (5) Cable Address, Telex or Fax Number _____

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instruments issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____

Title _____
Relationship with parties to agreement _____

Signature _____
Date _____

[61 FR 11584, Mar. 21, 1996]

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

Sec.

- 540.1 Scope.
- 540.2 Definitions.
- 540.3 Proof of financial responsibility, when required.
- 540.4 Procedure for establishing financial responsibility.
- 540.5 Insurance, guaranties, escrow accounts, and self-insurance.
- 540.6 Surety bonds.
- 540.7 Evidence of financial responsibility.
- 540.8 Denial, revocation, suspension, or modification.
- 540.9 Miscellaneous.

FORM FMC-131

FORM FMC-132A

FORM FMC-133A

APPENDIX A TO SUBPART A—EXAMPLE OF ESCROW AGREEMENT FOR USE UNDER 46 CFR 540.5(B)

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

- 540.20 Scope.
- 540.21 Definitions.
- 540.22 Proof of financial responsibility, when required.
- 540.23 Procedure for establishing financial responsibility.
- 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.
- 540.25 Evidence of financial responsibility.
- 540.26 Denial, revocation, suspension, or modification.
- 540.27 Miscellaneous.

FORM FMC-132B

FORM FMC-133B

Subpart C—General

- 540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.